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2 HON. BENJAMIN H. SETTLE
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
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14 NATHEN BARTON,
15
16 Plaintiff

17 v.
18 SERVE ALL, HELP ALL, INC.
19 Defendants.
20
21

22 Case No.: 3:21-cv-05338-BHS
23
24

25 ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTERCLAIM
26
27

28 SERVE ALL, HELP ALL, INC., a
29 California non-profit corporation,
30
31 Counterclaimant
32
33 v.
34

35 NATHEN BARTON,
36
37 BARTON.
38
39

40 COMES NOW defendants SERVE ALL, HELP ALL, INC. and answers the Second
41
42 Amended Complaint
43
44

as follows: There are no paragraph numbers. Defendants respond to each paragraph in order.

I. THE PARTIES TO THE COMPLAINT

Defendant lacks information on which to admit or deny the information in the first paragraph and leaves Plaintiff to his proofs at trial.

Defendants admit the information in the second paragraph.

II. BASIS FOR JURISDICTION

Defendant lacks information on which to admit or deny the information in the first paragraph and leaves Plaintiff to his proofs at trial.

If Plaintiff's assertions about his residence are correct, then the information in the second paragraph would be admitted.

Defendant admits the allegations in the third paragraph.

Defendant admit the allegations in the foruth paragraph./

III. STATEMENT OF CLAIM

Defendant lacks information on which to admit or deny the information in the first paragraph and leaves Plaintiff to his proofs at trial.

Frequent Calls

This paragraph appears to be introductory and a response would not be necessary. However, Defendant lacks information on which to admit or deny the information in the first paragraph and leaves Plaintiff to his proofs at trial.

Defendant admits its calling system leaves a voice mail message if there is no answer.

Defendant admits it called phone numbers in the 360 area code; however, defendants lack information as to which (360) number Plaintiff refers to and whether that number is in

1 fact Plaintiff's, so defendants deny the rest of the paragraph at Page 2 lines 23-24..

2 Defendant admits it called phone numbers in the 360 area code between that time
3 frame; however, defendants lack information as to which (360) number Plaintiff refers to and
4 whether that number is in fact Plaintiff's, so defendants deny the rest of the paragraph at
5 Page 3 lines 1 through 3.

6 **First Documented Robocall – February 15, 2021**

7 Defendant admit their calling system using phone number (844) 622-2243 placed a
8 call to an area code 360 phone number on or about 1:40PM, February 15, 2021. The rest of
9 the first sentence is left to plaintiff's proof at trial. Defendant has no information as to
10 whether the phone number was registered to the Plaintiff.

11 Defendants cannot admit nor deny the information in the second paragraph so
12 defendant leaves plaintiff to his proofs at trial as to the allegations in the paragraph on page 3
13 lines 9 through 11.

14 Defendant admits the allegation in the third paragraph at page 3 lines 12-15.

15 Defendant lacks information to admit or deny the allegations in the paragraph at page
16 3 lines 16 though 19.

17 **SAHA Solicits Money**

18 Defendant admits it is a non profit and that Mr. Cotta sent an email requesting
19 documents but the rest of the paragraph at page 5 lines 4 through 8, defendant leaves plaintiff
20 to its proofs at trial.

21 Defendant admits that page 5 lines 14 are the contents of the email that is attached to
22 the complaint

1 Defendant denies page 5 lines 15 through 17. As a further defense, Defendant states
2 that the money requested is to pay third parties for the costs of credit reports which are
3 necessary for defendant's services and that was not a solicitation for services. Defendant
4 denies the remainder of that paragraph through line 19, and leave plaintiff to his proofs at
5 trial.

6 As to page 5 lines 20 though page 6 lines 4, the document speaks for itself therefore
7 Defendant neither admits nor denies. However by way of further defense. Defendant states
8 that Bay Balley Mortgage Group is a referral company nor does defendant have a direct
9 interest in that company.

10 Page 6 lines 8 though 14, defendant neither admits nor denies and leaves plaintiff to
11 his proofs at trial.

12 Defendants neither admit nor deny the allegations contained in Page 6 lines 15 through
13 19, as it appears to be opinion more than facts.

14 Defendant neither admits nor denies the allegations contained in page 5 lines 20 thought
15 22 as it appears to be a conclusion and therefore leaves plaintiff to his proofs at trial.

16 Defendant denies the allegations contained in page 5 line 24 through line 24.

17 Defendant admits the allegations in page 6 lines 1 through 2. As a further response,
18 SAHA states that SAHA benefits in no way from the allegations in that sentence.

19 Defendant denies the allegations in Page 6 lines 3 through 5. As a rfurther response,
20 SAHA has repeatedly informed plaintiff that there are no "owners" of the non profit.

21 **More Solicitations on Following Days**

22 Defendant cannot admit nor deny the allegations in page 6 lines 7 through 9 as there is
23 not a phone number listed and defendant is not in a position to know what number is or is not
24

1 Plaintiff's just by an area code; therefore, defendants leave plaintiff to his proofs at trial.
2

2 Defendant cannot admit nor deny the allegations in page 6 lines 10 through 12 and
3 therefore leave plaintiff to his proofs at trial.
4

4 Defendant denies the allegations contained in page 6 lines 13 through 24. As a further
5 response, Plaintiff himself recorded the original conversation and posted it on Youtube. He
6 provide that link in his original complaint.
7

Two More Robocalls on Following Days

8 Defendant lacks information to admit or deny the allegations in page 7 lines 2 through
9 and therefore leaves plaintiff to his proofs. As further response, plaintiff's complaint does
10 not specify a number and therefore defendants have no idea which number plaintiff is
11 referring to.
12

13 Defendant denies the information contained in paragraph at page 7 line 9 through 11.
14

14 Defendant admits it uses an automatic dialer but whether that meets the definition of
15 the statute is a legal conclusion and therefore, as to that portion of the paragraph at page 7
16 liens 12 through 14, defendant leaves plaintiff to his proofs at trial.
17

All of the Robocall Messages and Voices was Identical

18 Defendants lack sufficient information to admit or deny the allegations in this section
19 and therefore leaves plaintiff to his proofs at trial. As a further response, plaintiff does not
20 identify what call, and part of this section contains a legal conclusion.
21

NACA and SAHA are Annoying the Public

22 Defendant lacks information upon which to admit or deny the allegations in this
23 section and therefore leaves plaintiff to his proofs at trial. As a further response n part as they
24
25

1 contain an opinion or conclusion rather than facts, and he fails to identify the phone number in
2 question.

3 **IV. RELIEF**

4 Defendants deny the allegation in this paragraph.

5 **DEFENSES**

6 Defendant SAHA., asserts the following defenses

7 1. Ambiguity

8 Defendants assert the plaintiff did not clearly state the issues in this case, making it
9 difficult for these answering defendants to fully respond, and therefore ask this Court for leave
10 to amend this answer to assert additional defenses once information is discovered that would
11 allow defenses to be known.

12 2. Failure to State a Claim Upon Which Relief Can Be Granted

13 Plaintiff's complaint fails to state a claim upon which relief can be granted against this
14 Defendants.

15 3. Standing

16 Mr. Barton does not have standing to bring the claims asserted.

17 4. Bad Faith

18 Mr. Barton has fraudulently manufactured lawsuits with the intent of obtaining money
19 through the misuse of the TCPA and currently has nine active federal cases, which defendant
20 believes shows bad faith. Mr. Barton is not the type of plaintiff the law was created to protect
21 and therefore, lacks Article III standing to even bring the lawsuit. See *Stoops v. Wells Fargo*
22
23 *Bank, N.A.*, 197 F. Supp.3d 782 (W.D. Pa. 2016).

1 5. Fraud

2 These answering defendants assert that plaintiff or plaintiff's assignee used fraud,
3 deceit or misrepresentation to invite the contact

4 6. Unclean Hands

5 These answering defendant assert that plaintiff or plaintiff's assignee committed a
6 wrongful act and/or fraud and/or misrepresentation and is attempting to benefit from those
7 acts through this lawsuit.

8 7. Failure to Mitigate

9 These answering defendant assert that neither plaintiff nor plaintiff's assignee on
10 plaintiff's behalf to mitigate his damages.

11 ADDITIONAL FACTS FOR DEFENSES:

12 Plaintiff, or someone acting at Plaintiff's direction, posted on Youtube at
13 <https://www.youtube.com/watch?v=b4ZBxSyDvdg> a recording of a phone call wherein the
14 caller identifies himself as Nathan Barton. The posting captures the beginning of the phone
15 call, where you can hear the caller select options and be connected to a live person who
16 immediately identifies "Non Profit Alliance" and then through the 8 minute phone call, the
17 caller identifies himself as Nathan Barton and provides a phone number with a 360 area code
18 and a phone number with a 947 area code as well as his email and address.

19 Any contact after selecting to be connected with a live person is invited contact. Any
20 calls after that, are invited as Mr. Barton himself provided his information to the
21 representative.

1 AND NOW having answered the allegations of the Complaint and having pled
2 affirmatively, these answering defendants deny that Plaintiff is entitled to any relief and
3 demands that the Complaint be dismissed at Plaintiff's cost.

4 **COUNTERCLAIM**
5

6 SERVE ALL, HELP ALL, INC., a California 503(c) corporation, files this
7 Counterclaim against NATHEN BARTON ("BARTON"), an in support of its individual and
8 collective Causes of Action state:

9 **I. PARTIES**
10

11 1.1 Counterclaimant SERVE ALL, HELP ALL, INC. is a California 503 (c)
12 corporation, with is primary location in Santa Ana, California. (Hereinafter referred to as
13 "SAHA")

14 1.2 BARTON NATHEN BARTON, is an individual, residing in Clark County,
15 Washington.

16 **II. JURISDICTION AND VENUE**
17

18 2.1 The original complaint was filed in this venue and jurisdiction.

19 **III. ADDITIONAL FACTS**
20

21 3.1 SAHA is informed and believe and thereon allege that Counterdefendant
22 NATHEN BARTON in or about February opted into a marketing campaign to receive
23 communication from an entity operated or represented by the Counterclaimants or one of its
24 affiliates.

1 3.2 Counterdefendant NATHEN BARTON opted in to receive information from
2 SAHA or one of their affiliates by providing his phone number. Unfortunately, the
3 Complaint does not specify which number that is.

4 3.3 SAHA and their affiliates retain information and regarding the IP address of
5 individuals that interact with its websites.

6 3.4 SAHA is informed and believe and thereon allege that Counterdefendant
7 NATHEN BARTON provided a fake name when he provided his phone number on the
8 website when opting in to receive information.

9 3.5 BARTON opted in, gave false information, and then waited for contact.

10 3.6 Once BARTON was contacted by SAHA, and other businesses, using a
11 different phone number, so that once his complaint was filed, he could not be traced through
12 his opt-in information.

13 3.7 In BARTON'S original complaint, which as since been amended twice, he
14 listed a link to a Youtube posting wherein BARTON can be heard selecting the option to
15 speak to someone and engaging a live person on the other end of the call.

16 3.8 BARTON himself, or someone acting on his behalf, recorded the conversation.
17 Not only that, BARTON has provided his own evidence as to what occurred on that call,
18 that allegedly occurred on February 15, 2021. On that call, you can hear the live person
19 identify "Non Profit Alliance. How may I help you?" within seconds of the call being
20 connected.

21 3.9 In that conversation, BARTON provides his name, his son's cell phone number
22 and BARTON's own cell phone number as well as his address to the representative.
23
24
25

3.10 SAHA is informed and believe and thereon allege that Counterdefendant NATHEN BARTON opted in with the intent to engage Counterclaimants and their affiliates in actions that BARTON intended to use to file lawsuits for violating the TCPA.

3.11 SAHA is informed and believe and thereon allege that Counterdefendant NATHEN BARTON had a scheme to “get rid of robocalls” and purposely sought out businesses to sue for his own personal financial gain.

3.12 SAHA was contacted by BARTON who engaged with SAHA and consented to SAHA and its representatives to engage with him for service offered.

3.13 SAHA received an email from BARTON after consenting to receive information which stated "I am sorry, I am not really interested in loan modification. A couple of days ago I got an illegal robocall and I played along to see who it was and unfortunately, it was you folks. I have a mission to get rid of robocalls... if you folks would like to talk it over, I am willing. Otherwise within a few weeks I will be down there for your company."

3.14 BARTON has filed at least nine similar lawsuits in this and other courts, alleging similar actions.

IV. CAUSE OF ACTION – FRAUD

4.1 SAHA repeat and reallege the allegations set forth in paragraphs 1.1 through
3.13

4.2 SAHA is informed and believe and thereon alleges that BARTON used a false name when opting-in.

1 4.3 Alternatively, SAHA is informed and believes and thereon alleges that
2 BARTON used a phone he recently purchased and using information in that phone,
3 responded to solicitations meant for the previous owner of the phone number.

4 4.4 SAHA is informed and believe and thereon allege that BARTON filed a
5 complaint alleging actions involving a phone number but only stated an area code, for the
6 purpose of hiding the phone number involved so that his true actions could not be traced.

7 4.5 SAHA is informed and believe and thereon allege that BARTON falsely
8 represented this information for the purpose of showing that the messages he received were
9 unsolicited.

10 4.6 SAHA is informed and believe and thereon allege that BARTON represented
11 himself using a false name when he opted-in and to represent to the court in his lawsuit that
12 he had never opted in to receive information, and to induce Counterclaimants (and other
13 businesses) to believe BARTON was interested in the communication.

14 4.7 SAHA is informed and believes and thereon alleges that BARTON opted in on
15 a call on February

16 4.8 SAHA is informed and believe and thereon alleges that BARTON did these
17 actions complained of to further his mission to “take down robocallers”.

18 4.9 SAHA is informed and believes and thereon alleges that BARTON’s
19 motivation for this is for his own economic gain, through a plan that the defendants in his
20 cases will simply pay him rather than defend.

21 4.10 SAHA is informed and believe and thereon alleges that when BARTON made
22 these representations, he knew they were false.

1 4.11 SAHA is informed and believes and thereon alleges that when BARTON made
2 this representation he did so with the intent that Counterclaimants would act on it.
3

4 4.12 Counterclaimants took their actions in reliance on BARTON's representations.
5

6 4.13 SAHA is informed and believes and thereon alleges that BARTON took the
7 actions complained of in the hopes that SAHA would pay money to him rather than defend
8 the action.
9

10 4.14 SAHA expended both employee time, attorneys fees, and other resources to
11 fulfill its contractual obligations based on BARTON's actions
12

13 **V. CAUSE OF ACTION -FRAUD BY NONDISCLOSURE**
14

15 5.1 SAHA repeats and realleges the allegations set forth in paragraphs 1.1 through
16 4.13
17

18 5.2 SAHA is informed and believe and thereon allege that when BARTON knew
19 or had reason to know that prior to his lawsuit, he affirmatively gave Counterclaimants
20 and/or third parties consent to receive text messages and phone calls from Counterclaimants'
21 and third party providers. BARTON took no action to correct that opt-in information
22

23 5.3 To the extent that BARTON did not wish to receive text messages and/or
24 phone calls at the alleged 360 phone number, he intentionally concealed from or failed to
25 disclose that fact to Counterclaimants. Because BARTON was the person with the most
knowledge related to whether he wished to receive text messages and phone calls at his
phone number, and because he was well aware of potential liability under the TCPA (based
on his multiple lawsuits), BARTON had a duty to disclose to SAHA his desire not to receive
such contact.

1 5.4 BARTON's failure to disclose his desire to not receive text messages and
2 phone calls was material because he knew that Counterclaimants had received an opt-in
3 notice from BARTON for the alleged phone number

4 5.5 By failing to disclose his desire to not receive text messages and phone calls
5 BARTON intended SAHA to fulfill their contractual obligation with third parties who would
6 then send BARTON text messages that all believed had been requested by BARTON.

7 5.6 Despite knowing about BARTON's opt-in and failure to disclose to SAHA that
8 BARTON did not want to receive text messages or phone calls, BARTON claimed that those
9 messages were "unsolicited" in his lawsuit

10 5.7 Knowing BARTON had no intention of seeking SAHA's services BARTON
11 purposely engaged SAHA from one of its solicitations and caused SAHA to further interact
12 with BARTON.

13 5.8 SAHA expended both employee time, attorneys fees, and other resources to
14 fulfill its contractual obligations based on BARTON's failure to disclose.

16 **CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION**

17 6.1 SAHA repeats and realleges the allegations set forth in paragraphs 1.1 through
18 4.13

19 6.2 BARTON supplied information to SAHA to entice SAHA to act on it, namely
20 to contact him for services.

21 6.3 BARTON had no intention of seeking the services provided by SAHA and its
22 agents.

23 6.4 BARTON knew or should have known that the information was supplied to
24 SAHA for the purpose of engaging them in a business transaction
25

1 6.5 BARTON, if not purposeful, was negligent in communicating that information

2 6.6 BARTON knew or should have known that SAHA would rely on the

3 information being provided for a business transaction

4 6.7 BARTON knew or should have known that in receiving such contact

5 information from BARTON, that SAHA or its agents would contact BARTON seeking to

6 engage in a business transaction.

7 6.8 BARTON knew at the time he provided that information that BARTON did

8 not intent on entering into a business transition.

9 6.9 BARTON knew or should have known that SAHA's reliance on receiving

10 contact information from BARTON was reasonable.

11 6.10 BARTON knew or should have known that giving SAHA his contact

12 information when he did not intend to enter into a business transaction with SAHA damaged

13 SAHA as set forth herein.

15 **CONCLUSION AND REQUEST FOR RELIEF**

16 Counterclaimants request that the Court enter a judgment that BARTON is liable for
17 common-law fraud and fraud by non-disclosure and award Counterclaimants' actual damages,
18 exemplary damages, interest, costs, attorneys' fees and all other relief that this Court finds fair
19 and just.

20 DATED: February 24, 2022

21 s/Donna Gibson

22 Donna Gibson, WSBA #33583

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